

## **CHAPTER 89-02-05.1**

### **LICENSES FOR EMERGENCY DRAINAGE**

#### **Section**

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**89-02-05.1-01. Scope of chapter.** This chapter contains rules concerning temporary emergency drainage licenses.

**History:** Effective June 1, 1998.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-05.1-02. Definitions.** Unless the context otherwise provides, the following definitions apply:

1. "Application" means an application for licensure for an emergency drain.
2. "Board" means the board of the water resource district in which the emergency drainage license is sought.
3. "Drain" means any structure or construction which changes the water surface area of a pond, slough, lake, or sheetwater, or any series thereof, having a watershed of eighty acres [32.37 hectares] or more.

**History:** Effective June 1, 1998.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-05.1-03. Emergency drain - Licensure to be temporary.** A license received under this chapter has a duration of not more than six months unless extended as provided in this chapter.

**History:** Effective June 1, 1998.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-05.1-04. Emergency defined.** An emergency for purposes of this chapter is a situation which if not addressed immediately will cause

significant damage to persons or property which would not occur under normal circumstances. An emergency may exist as a result of an extremely wet cycle. However, damages caused by deliberate acts of any individual do not constitute an emergency under this chapter unless the damage can be alleviated without harm to other persons or property.

**History:** Effective June 1, 1998.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-05.1-05. Form of application for an emergency drain.** Applications for an emergency drainage license must be written and must contain the following information:

1. Landowner's name and address.
2. Legal description of land on which the emergency drain will be located.
3. A map showing the location of the drain.
4. An estimate of the surface acreage of the pond, slough, lake, or sheetwater, or any series thereof, and the volume of water to be drained by the emergency drain.
5. A list of all landowners whose land is adjacent to the course the water drained will take for a distance of one mile [1.6 kilometers] downstream, along with the addresses and telephone numbers of these landowners.
6. Copies of any written permission received from downstream landowners.
7. A compilation of any written or oral refusals from downstream landowners to give permission.
8. A description of the emergency.
9. Written permission allowing the state engineer and board to inspect the drain.

**History:** Effective June 1, 1998.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-05.1-06. Procedure for consideration of emergency drain applications.** An application for an emergency drain must be sent simultaneously to the board and the state engineer. The application will be reviewed for completeness by the board and the state engineer. The board and state engineer shall also make a preliminary determination as to the existence of an emergency. As soon as possible, a conference call or an onsite meeting among the board, the

state engineer, and other affected parties, as determined by the state engineer, must be held. The applicant or any other affected party may make a statement concerning the emergency drainage application during the conference call or onsite meeting. Any conference call or onsite meeting must be electronically recorded. During the call or meeting, but after all parties have been given an opportunity to present their views, the board shall make a recommendation to the state engineer whether or not the license should be granted.

**History:** Effective June 1, 1998.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-05.1-07. Decision on emergency license application - Conditions.** After completion of the conference call or onsite meeting, the state engineer shall consider the written information received, the matters discussed during the conference call or onsite meeting, and the recommendation of the board. Based upon this information, the state engineer shall decide whether the emergency license should be granted. If the license is granted, the state engineer may place any condition upon it which the state engineer deems necessary to protect public or private interests. A condition may include a requirement for a bond. The license must contain a condition limiting the duration of the license to a timeframe of not greater than six months.

**History:** Effective June 1, 1998.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-05.1-08. Requirement for permanent drainage application.** If the drain is to be permanent, the applicant shall submit a drainage permit application to the state engineer in accordance with chapter 89-02-01. If the application is submitted no later than thirty days prior to the date the emergency license expires, the term of the emergency license is extended until final action on the drainage permit application has been taken unless the state engineer determines that the drain should be closed to prevent damage to public or private interests.

**History:** Effective June 1, 1998.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-05.1-09. Closure of temporary drain.** If an application for a permanent drainage permit is not submitted thirty days prior to the date the emergency license expires, the applicant shall immediately make preparations for closure of the drain unless the applicant has applied in writing for an extension from the state engineer and that extension has been granted. Preparations must include entering by other individuals, obtaining any permission necessary from other landowners, and obtaining any permission or authorizations necessary. Closure of the drain must be completed on or before the license expiration

date. The applicant shall keep the board and the state engineer informed of the applicant's progress in closing the drain.

**History:** Effective June 1, 1998.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-05.1-10. License does not absolve liability for damages.** The receipt of a license for emergency drainage does not relieve an applicant from liability for damages resulting from any activity conducted pursuant to the license.

**History:** Effective June 1, 1998.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03